

E-299, 132/SA-89-368DENYING INTERIM SERVICE RIGHTS TO THE CITY OF ROCHESTER

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Barbara Beerhalter	Chair
Cynthia A. Kitlinski	Commissioner
Norma McKanna	Commissioner
Robert J. O'Keefe	Commissioner
Darrel L. Peterson	Commissioner

In the Matter of a Petition by the City of Rochester, Minnesota to Provide Interim Service to Annexed and Newly Platted Areas Known as Cimarron Ninth and Hunter Hills Subdivisions Within the City of Rochester

ISSUE DATE: September 1, 1989

DOCKET NO. E-299, 132/SA-89-368

ORDER DENYING INTERIM SERVICE RIGHTS TO THE CITY OF ROCHESTER

PROCEDURAL HISTORY

In December, 1988, the City of Rochester (City) filed an application with the Minnesota Public Utilities Commission (the Commission) to adjust its service area to include all of the areas it has annexed since 1974 in its service area and to determine compensation due to People's Cooperative Power Association (People's) for these areas (Docket No. E-132, 299/SA-88-996). The areas involved in this matter are included in that application.

On May 30, 1989, the City filed a petition with the Commission for permission to extend its municipal electric service to the Cimarron Ninth and Hunter Hills Subdivisions while compensation is being determined. The areas in question lie within the city limits but are in the exclusive service territory of People's.

The City stated that it has facilities in place adjacent to the Cimarron Ninth Subdivision in the right of way at 49th Street Northwest, and in surrounding subdivisions and that it has facilities in place adjacent to the Hunter Hills Subdivision in the street right of way of Conway Court Northwest and in adjacent subdivisions to the west.

The City argued that it would be in the public interest to allow the City to extend its service to these areas because of the close proximity of the City's facilities and the ease of extension for the City. It further argued that allowing People's to extend for a short period of time would unnecessarily duplicate facilities.

People's responded to the City's application on June 28, 1989. It noted that in the area of Cimarron Ninth Subdivision, People's had served the original farmstead and has a pole and meter in place. Pursuant to the developer's needs, People's has installed underground cable and cabinets within the subdivision.

Regarding the Hunter Hills Subdivision, People's indicated that it has a single phase power line on

the southern boundary of the subdivision. At the time of its response, it had made arrangements with the developer to begin installing underground service in the subdivision.

The Minnesota Department of Public Service (DPS or the Department) filed comments on the City's petition on June 12, 1989, noting that no material facts are in dispute and recommending that the City's petition be denied.

Recognizing that the facts present here are nearly identical to those presented in Vogel Outdoor Advertising, Docket No. E-132, 299/SA-89-269, the Department recommended that the Commission deny the City's petition.

The Commission met on July 20, 1989 to consider this matter.

### FINDINGS AND CONCLUSIONS

The Commission must determine whether People's or the City should provide service to the Cimarron Ninth and Hunter Hills Subdivisions until compensation has been determined and paid by the City to People's.

The Commission finds that there are no material issues of fact in dispute in this matter and that a contested case proceeding is unnecessary to resolve the issues of interim service rights presented here.

Minn. Stat. § 216B.44 (1988) governs this proceeding. It provides that when a municipality which owns and operates a public utility extends its boundaries through annexation or consolidation, or extends its service territory within its existing boundaries, the municipality shall thereafter provide electric service to these areas unless the area is already receiving service from an electric utility. If so, the municipality may purchase the facilities of the electric utility serving the area.

The statute sets guidelines for the purchase and sale of the facilities. If the municipality and the utility cannot agree on a purchase price, the statute provides that either can petition the Commission to determine the appropriate terms for the sale. The statute provides that after notice and hearing the Commission can determine the terms of the sale. The law lists factors for

the Commission to consider in making its determination. Minn. Stat. § 216B.44 (1988) then states:

Until the determination by the commission, the facilities shall remain in place and service to the public shall be maintained by the owner. However, the electric utility being displaced, serving the annexed area, shall not extend service to any additional point of delivery within the annexed area if the commission, after notice and hearing, with due consideration of any unnecessary duplication of facilities, shall determine that the extension is not in the public interest.

Here, the electric utility being displaced is People's. It serves the annexed areas. In cases involving these same parties, the Commission has addressed the rights of a municipality to serve recently annexed areas which are receiving electric service from an electric utility already serving an area while compensation is being determined. The Commission has found that within its assigned service territory, a utility is providing electric service within the meaning of the statute if it has facilities in place which are capable of serving the area, whether or not there are customers physically present.

The Commission reaffirms those findings. To find otherwise would create artificial distinctions. If an actual customer is required for a utility to be providing service, it could be argued that, perhaps, service is being provided to the lots touching that customer's lot, but not across the street, two lots away, three lots away, etc. This is unnecessarily complicated and is a tortured interpretation of the statute. People's has facilities in place which are capable of serving the named subdivisions and, therefore is serving the areas within the meaning of the statute.

In addition, Minnesota law requires every public utility to provide safe, adequate, efficient, and reasonable service within its exclusive service territory. Minn. Stat. §§ 216B.04 and 216B.40 (1988). Service to the public must be maintained during interim authority proceedings and compensation proceedings. Prudence and sound public policy demand that a utility anticipate load growth within its service area and plan for the capacity to meet that growth. Here, that planning for the future allows customers to receive electric service virtually upon request because facilities are in place. The public interest is not served by narrowly construing the law to require an actual customer for a utility to be providing service within its assigned service area.

The Commission reiterates its findings that Minn. Stat. § 216B.44 (1988) gives an eventual statutory preference for a municipality which owns or operates an electric utility to serve persons within that municipality's corporate boundaries. However the Commission finds that the preference arises only after compensation is determined and paid. It does not operate at this stage of this proceeding.

At this stage of the proceeding, prior to extending service to the Cimarron Ninth and Hunter Hills Subdivisions, the City must show that it is not in the public interest for People's to serve them. The City has failed to make that showing. The City has not proven to the Commission's satisfaction that People's cannot provide adequate service to the subdivisions, that the cost of extending or providing that service is unreasonable, or that facilities will be duplicated if People's serves the subdivisions. The Commission concludes that the City of Rochester's request to provide interim service should be denied and that People's should be allowed to serve the subdivisions until compensation is determined and paid. The Commission will so order.

ORDER

1. The City of Rochester's request for authorization to provide interim service to the Cimarron Ninth and Hunter Hills Subdivisions is hereby denied.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Mary Ellen Hennen  
Executive Secretary

(S E A L)